

Direct Pay Provisions in the Inflation Reduction Act – How Can Public Power and Cooperatives Benefit?



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Overview

- What Happened?
 - The Inflation Reduction Act made tax exempt electric cooperatives and public power eligible for the same tax benefits available to taxable entities
- How Does it Work?
 - Entities that don't pay federal income tax can receive a direct payment for eligible investments
- How Much?
 - Ranges based on requirements and bonus credit eligibility

What are the Strings?

- Prevailing wage, apprenticeship and domestic content requirements



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Direct Pay and Waterpower

- Expands 10-year Production Tax Credit (PTC) for projects placed in service after December 31, 2022 and beginning construction before 2025
 - Doubles existing hydro PTC for parity (eliminates “half credit” problem)
 - Includes incremental hydropower and certain new capacity
 - Retrofits of non-powered dams with hydro capacity
 - Pressurized conduits, hydrokinetic, and marine energy projects 25kW and above
 - Based on energy produced and sold over a 10-year period
 - Base credit 0.52 cents per kWh to (likely) max 3.12 cents per kWh, adjusted for inflation if all bonus credits are achieved
- Investment Tax Credit
 - Extends option to choose the ITC for PTC eligible projects
 - Projects placed in service after 2022 that begin construction prior to 2025
 - Credit potential ranges from 6 – 50%.
- New technology-neutral energy storage ITC over 5 kWh (pumped storage) through 2032
- Tech Neutral Credit

After 2024, the current tax incentives transition to the technology neutral clean electricity PTC/ITC credit through 2032 (this could include all new hydro; more rules expected).



Domestic Content: Existential Issue for Direct Pay

- Public power must meet domestic content requirements to receive direct pay; however, if they do, they can also receive a 10% bonus credit like taxpayers.
 - 100% for steel and iron
 - Manufactured products 45% in 2025; 50% in 2026; 55% thereafter
- Waivers available if:
 - 1) increases overall construction costs by more than 25%; or
 - 2) products are not produced in the U.S. in sufficient and reasonably available quantities of satisfactory quality; or
 - 3) project is under 1 MW.
- Phased in, so projects not meeting domestic content can receive:
 - 100% direct pay for projects beginning construction before 2024
 - 90% beginning construction in 2024
 - 85% beginning in 2025
 - 0% in 2026 and beyond unless requirements are met or waived



Prevailing Wage and Apprenticeship Requirements

- PTC and ITC have a base rate and bonus rate based on paying prevailing wage and meeting apprenticeship requirements.
- Bonus rate is five times the base rate.
 - 0.52 cents base x 5 = 2.6 cents for PTC
 - 6% base x 5 for 30% credit for energy property for ITC
- Failure to satisfy could result in penalties.
- Good faith effort may satisfy for apprenticeship rules, which entail ensuring a certain percentage of labor is performed by apprentices.



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Bonus Credit: Energy Community

- 10% additional credit for
 - Project in a brownfield site
 - Area that during or after 2010 had 0.17 percent direct employment in fossil fuel activities and 25 percent or more tax revenues from such activities and has an unemployment rate at or above the national average
 - Or a census tract or directly adjoining tract where a coal mine closed after 2000 or a coal plant retired after 2010.



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Noteworthy Financing Provisions

- Includes a 15 percent haircut on the direct payment percentage related to the fraction of the proceeds used to finance the project over the aggregate financing amount.
- Direct payments are protected from sequestration (automatic cuts to federal mandatory spending programs for deficit reduction).
- PPA versus direct ownership?



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Next Steps: How Are We Engaging Members?

- Treasury outreach and comment letters
- Awaiting additional guidance from Treasury
- Upcoming IRS registration process
- Educating members
- Urging members to seek tax guidance
 - Timing of construction rules are complex and change
 - Tax advisor input needed before committing to contracts
 - Bonus credit advice is important
 - Consider outreach to manufacturers
- Watching debt deal and IRA repeal discussions for impacts on direct pay support



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Questions

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